1982

The State of Utah v. Mary Holloway : Brief of Respondent

Utah Supreme Court

Ronald J> Yengich; Attorney for Appellant;
David Wilkinson; Attorney for Respondent;

IN THE SUPREME COURT OF THE STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff-Respondent,	:	
-v-	:	Case No. 18219
MARY HOLLOWAY,	:	
Defendant-Appellant.	:	

BRIEF OF RESPONDENT

Appeal from a judgment and conviction rendered by the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable Peter F. Leary, Judge, presiding.

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TABLE OF CONTENTS

	Page
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT.	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF THE FACTS.	2
ARGUMENT	
POINT I. THE TRIAL COURT PROPERLY REJECTED APPELLANT'S REQUEST FOR A MANSLAUGHTER JURY INSTRUCTION .	4
A. APPELLANT WAS NOT ENTITLED TO INSTRUCTION ON MANSLAUGHTER AS A LESSER INCLUDED OFFENSE	5
B. APPELLANT WAS NOT ENTITLED TO A MANSLAUGHTER INSTRUCTION ON HER THEORY OF THE CASE . .	13
CONCLUSION.	14

Cases Cited

Farrow v. Smith, Utah, 541 P.2d 1107 (1975)	5
State v. Burrow, 221 Kan. 754, 561 P.2d 864 (1977). . .	10
State v. Chestnut, Utah, 621 P.2d 1228 (1980)	8
State v. Dougherty, Utah, 550 P.2d 175 (1976)	6-8, 10,12
State v. Eagle, Utah, 611 P.2d 1211 (1980).	13
State v. Elliott, Utah, 641 P.2d 122 (1982)	8,9
State v. Norman, Utah, 580 P.2d 237 (1978).	5
State v. Sisneros, Utah, 631 P.2d 856 (1981).	12
State v. Stone, Utah, 629 P.2d 442 (1981)	13
State v. Torres, Utah, 619 P.2d 694 (1980).	13

Statutes Cited

Utah Code Ann., § 76-1-402(4) (1973), as amended. . . .	5,6,8, 12
" " " § 76-2-306 " " "	12
" " " § 76-5-203 " " "	10
" " " § 76-5-203(1)(a)" " "	10
" " " § 76-5-205 " " "	9
" " " § 77-33-6 (1953), as amended.	6,8

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Plaintiff-Respondent,	:	
-v-	:	Case No. 18219
MARY HOLLOWAY,	:	
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BRIEF OF RESPONDENT

STATEMENT OF THE NATURE OF THE CASE

The appellant, Mary V. Holloway, was charged with second-degree murder, a first-degree felony, in violation of Utah Code Ann., § 76-5-203 (1973), as amended, and was tried before a jury in the Third Judicial District Court in and for Salt Lake County, the Honorable Peter F. Leary presiding.

DISPOSITION IN THE LOWER COURT

The jury found appellant guilty of second-degree murder, and the trial court sentenced her to an indeterminate term of not less than five years, and which may be for life, in the Utah State Prison.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of appellant's conviction.

STATEMENT OF THE FACTS

On March 13, 1981, following marital disagreements, the victim, Samuel Beare, temporarily occupied an apartment which was then in possession of the appellant, Mary Holloway, and Charles L. Crick (T. 239). The apartment is located at 269 Kelsey Avenue, Salt Lake City, Utah (T. 239). Prior to the victim's change in address, the friendship between the appellant and the victim had deteriorated to such a point that appellant told a friend that she and Charles Crick hated the victim and intended to kill him (T. 114-116, 124).

During the evening of March 14, 1981, Charles Crick, the appellant and the victim were in the Kelsey Avenue apartment drinking alcoholic beverages and watching television (T. 241). Later that evening, Charles Crick left to pick up his laundry and he returned to the apartment at approximately 12:00 midnight, accompanied by Tommy Garcia, an acquaintance (T. 241). Shortly thereafter and apparently following a heated argument, the appellant, Tommy Garcia, and Charles Crick attacked the victim in the apartment bedroom (T. 242, 243). Charles Crick choked the victim until he was nearly unconscious, whereupon the appellant grabbed his head, yanked it back, and told him to plead for his life (T. 134, 156). The appellant, along with the others, then hit the victim's head with glass beer mugs (T. 156). Charles Crick continued the vicious, cowardly attack on the helpless victim by hitting

him in the head with a bar of teak wood (T. 156). Following the beating, a knife was produced, and the appellant, Charles Crick and Tommy Garcia each took turns stabbing the victim, inflicting fifteen separate wounds, each wound seven to eight inches deep (T. 157, 196, 199).

The victim died at about 2:00 a.m. on March 15, 1981 (T. 199, 158, 3).

Following the murder, the victim's body was placed in the back seat of a car; and, with Charles Crick at the wheel and the appellant and Tommy Garcia as passengers, the body was transported to 1400 East Sunnyside Avenue where the car was parked near a street light (T. 3, 158, 261). Moments later, Ryan Nielsen, a University of Utah police officer who had finished his night shift at 2:00 a.m., drove by the car and noticed its three occupants standing nearby (T. 2, 3). Becoming suspicious, Officer Nielsen turned his car around and drove eastbound along Sunnyside Avenue passing the car and its occupants again (T. 4). Following another U-turn, Officer Nielsen proceeded westbound along Sunnyside Avenue and as he passed the car a third time he observed Tommy Garcia pulling the victim's body from the car (T. 4, 5, 245). Seeking help, Officer Nielsen drove to a 7-Eleven store located at 800 South 1300 East, informed the clerk of the situation and asked him to call the police (T. 5).

In the meantime, the car containing the murderers passed the 7-Eleven store heading westbound on 800 South, and Officer Nielsen followed it (T. 5). The car containing appellant malfunctioned and it stopped at 500 East 800 South (T. 6). As the appellant and the two other occupants investigated the problem, Officer Nielsen approached their car, identified himself, and told them to lie on the ground (T. 7). All three complied with his order (T. 7). Moments later, however, Tommy Garcia jumped up and ran from Officer Nielsen (T. 7, 246). Before pursuing Garcia, he told appellant and Charles Crick that they were under arrest and that they were to stay on the ground (T. 8). Officer Nielsen then pursued Tommy Garcia, apprehending him minutes later. In the meantime, appellant and Charles Crick fled on foot, returning to their apartment (T. 8, 247).

Following further police investigation, appellant and Charles Crick were both arrested on March 23, 1981 (T. 70).

ARGUMENT

POINT I

THE TRIAL COURT PROPERLY REJECTED APPELLANT'S REQUEST FOR A MANSLAUGHTER JURY INSTRUCTION.

At the conclusion of trial in a hearing outside the presence of the jury, appellant requested a manslaughter jury

instruction (T. 290). The trial court rejected the proffered instruction and appellant took exception (T. 295).

On her appeal, appellant argues that the facts in the record rationally supported a finding that her conduct fell within the purview of Utah Code Ann., § 76-5-205 (1973), as amended, as a lesser included offense, and that the trial court's refusal to issue the requested manslaughter instruction constituted reversible error. Alternatively, appellant argues that she, as a defendant in a criminal case, had a right to submit her theory to the jury in the form of instructions, and that the trial court's failure to submit the requested manslaughter instruction denied her that right.

A. APPELLANT WAS NOT ENTITLED TO AN INSTRUCTION ON MANSLAUGHTER AS A LESSER INCLUDED OFFENSE.

A defendant is not entitled to a jury instruction on a lesser included offense "unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense." Utah Code Ann., § 76-1-402(4) (1973), as amended. Since manslaughter is a lesser included offense of second-degree murder, see Farrow v. Smith, Utah, 541 P.2d 1107, 1109 (1975); cf. State v. Norman, Utah, 580 P.2d 237 (1978), the issue in the case at bar becomes whether or not the facts provided a rational basis

for a verdict acquitting the appellant of second-degree murder and convicting her of manslaughter.

Analysis that would be helpful in resolving this issue is found in State v. Dougherty, Utah, 550 P.2d 175 (1976). There, the defendant was charged with unlawful distribution for value of a controlled substance. During trial, an undercover agent testified that an intermediary made the initial arrangements for the future purchase of narcotics from the defendant. Once the arrangements were completed, the undercover agent, with the intermediary present, purchased the narcotics from the defendant. The intermediary, however, testified that the defendant was not present during the transaction and that the agent purchased the drugs directly from the intermediary. At the close of his trial and relying upon Utah Code Ann., § 77-33-6 (1953), as amended, the predecessor to § 76-1-402(4), the defendant requested the trial court issue an instruction on the lesser included offense of possession of a controlled substance. The trial court refused to issue this instruction and the defendant was convicted of the greater offense. Following his conviction, the defendant appealed, assigning as error the lower court's refusal to issue the requested jury instruction.

The Dougherty court began its analysis of appellant's claim by stating that a defendant does not have an absolute right to instructions on lesser included offenses,

but that the right only attaches when the evidence and circumstances justify. Id. at 176; and, when addressing this issue, the Court:

> will survey the evidence, and the inferences which admit of a rational deduction, to determine if there exists reasonable basis upon which a conviction of the lesser included offense could rest.

Id. at 176. This Court further noted that issues concerning lesser included offenses arose in three situations:

> First, where there is evidence which would absolve the defendant from guilt of a greater offense, or degree, but would support a finding of guilt of a lesser offense, or degree; the instruciton is mandatory.
>
> Second, where the evidence would not support a finding of guilt in the commission of the lesser offense or degree. For example, the defendant denies any complicity in the crime charged, and thus lays no foundation for any intermediate verdict. . . . This second situation renders an instruction on a lesser included offense erroneous, because it is not pertinent.
>
> Third, is an intermediate situation. One where the elements of the greater offense include all the elements of the lesser offense; because, by its very nature, the greater offense could not have been committed without defendant having the intent in doing the acts, which constitute the lesser offense. In such a situation instructions on the lesser included offense may be given, because all elements of the lesser offense have been proved. However, such an instruction may properly be refused if the prosecution has met its

> burden of proof on the greater offense, and there is no evidence tending to reduce the greater offense.

Id. at 176, 177 (Emphasis added). Affirming defendant's conviction, this Court held that the defense testimony could only prove complete innocence, and thus he was not entitled to an instruction on the lesser included offense because the evidence in the record shows he could only be found guilty or not guilty of the offense charged. Id. at 177.

Although Dougherty dealt with § 77-33-6, the earlier included offense statute, the appropriateness of its analysis under the purview of § 76-1-402(4), the current lesser included offense statute, was ratified by this Court in State v. Chestnut, Utah, 621 P.2d 1228 (1980).

More recently, the issue of a trial court's refusal to grant a requested jury instruction on a lesser included offense was addressed by this Court in State v. Elliott, Utah, 641 P.2d 122 (1982). There, the defendants were charged with the offense of aggravated sexual assault and convicted of the offense of forcible sodomy. Following conviction, the defendants appealed, asserting that the trial court erred when it refused to issue requested instructions on either assault or aggravated assault. Addressing this claim, this Court concluded that the lesser offenses of assault and aggravated assault were included within the offense of aggravated sexual assault. Furthermore, this Court found that evidence had been

adduced at trial which established a rational basis for a verdict of acquittal on the crime charged and for a conviction on the offenses of assault or aggravated assault. Critical to the establishment of the reational basis and to this Court's subsequent reversal of the conviction was defendant's testimony "wherein they readily admitted the commission of the assault, but denied the commission of sodomy or the intent to commit sodomy." Id. at 124 n. 14 (emphasis added).

Viewing the record in the instant case, appellant's attack upon her conviction must fail because there exists no evidence that would support a finding of guilt for manslaughter. The manslaughter statute, § 76-5-205, requires that the actor so convicted must have at least caused or recklessly caused the death of another. During trial, however, appellant maintained that Tommy Garcia was solely responsible for the victim's death and that she merely stood in the bedroom corner while the vicious attack occurred, pleading with Charles Crick to intercede in the victim's behalf (T. 244). Furthermore, she testified that she was forced to accompany Tommy Garcia as he disposed of the victim's body (T. 245). She also stated that when they arrived at their destination she remained in the car, and that after Garcia removed the victim he returned covered with blood and holding a knife (T. 246). Even during closing argument appellant maintains her innocence, claiming that there existed no evidence pointing to her involvement in the murder. Thus,

under the Dougherty rule, the issuance of a manslaughter instruction at appellant's trial would have been erroneous because appellant denied any complicity in the victim's murder and laid no foundation for an intermediate verdict. See also: State v. Burrow, 221 Kan. 754, 561 P.2d 864 (1977) (held that the lower court properly refused appellant's requested manslaughter instructions because appellant testified that they had not participated in any unlawful killing).

Furthermore, the instant case also falls within the third category summarized in Dougherty, supra, because respondent met its burden of proof for second-degree murder and there was no evidence tending to reduce the crime to manslaughter. Utah Code Ann., § 76-5-203(1)(a) (1973), as amended, provides that "[c]riminal homicide constitutes murder in the second degree if the actor: Intentionally or knowingly causes the death of another. . . ." The evidence adduced at trial overwhelmingly supports appellant's guilty verdict for second-degree murder. Prior to the murder, appellant, with Charles Crick present, told Lillian Archuleta that they hated the victim and intended to kill him (T. 116). Furthermore, on the morning following the murder, with two visitors present, appellant recounted in detail the events that led to the victim's death (T. 130, et seq.; 150, et. seq.): specifically, appellant had grabbed the victim's head and made

him plead for his life; she had struck the victim's head with a beer mug; and finally, she had taken turns with the two other murderers stabbing the victim with a knife, producing fifteen wounds, each of which was fatal. The only reasonable interpretation to this horrendous sequence of events is that appellant either intentionally or knowingly caused the death of the victim and was thus guilty of second-degree murder.

In addition, there exist no facts indicating that appellant could have been convicted of manslaughter. Appellant argues, however, that the following facts support an inference that she was reckless and thus entitled to a manslaughter instruction: she did not participate in the initial confrontation between Tommy Garcia and the victim; she had been drinking the evening the victim died; she had no blood on her person; and she was only a passenger in the car that transported the victim's body. None of these alleged facts separately or collectively would tend to reduce the offense from second-degree murder to manslaughter. Assuming that appellant's testimony is true, the fact that she did not participate in the initial argument between Tommy Garcia and the victim does not change the legal effect of her subsequent conduct--the fatal stabbing of the victim. Also, the fact that no blood was found on appellant's body is insignificant since the evidence adduced at trial indicates that Tommy Garcia placed the body in and removed it from the car. Equally insignificant is the fact that appellant was merely

a passenger in the car carrying the victim's body because this fact in no way supports an inference that appellant recklessly caused the victim's death. Finally, mere consumption of alcohol before the commission of the crime does not tend to reduce that crime from second-degree murder to manslaughter. In State v. Sisneros, Utah, 631 P.2d 856, 859 (1981), this Court, in construing Utah Code Ann., § 76-2-306 (1973), as amended, the voluntary intoxication statute, adopted as consistent therewith the following statement:

> Under the law, a state of voluntary intoxication from alcohol is not a defense to a criminal charge unless such intoxication is of such degree or state as to negate the existence of the mental state which is an element of the offense.

Neither testimony nor any other facts in the record support a conclusion that appellant was so inebriated that she was unable to form the requisite intent for second-degree murder. Appellant's consumption level was not sufficient to negate the mental state for second-degree murder and thus this fact does not tend to reduce the offense to manslaughter.

Therefore, under Dougherty, supra, and § 76-1-402(4), appellant was not entitled to her requested manslaughter instruction and thus the trial court did not commit error in denying her request.

B. APPELLANT WAS NOT ENTITLED TO A MANSLAUGHTER INSTRUCTION ON HER THEORY OF THE CASE.

A defendant is entitled to the issuance of jury instructions that present his theory of the case. State v. Torres, Utah, 619 P.2d 694, 695 (1980). This entitlement is not absolute, however, but is predicated upon the existence of evidence providing a reasonable basis that justifies giving the requested instructions. State v. Eagle, Utah, 611 P.2d 1211, 1213 (1980). Furthermore, a defendant is not entitled to the presentiment of a new theory through jury instructions when that theory is wholly inconsistent with the theory the defendant actually proffered during trial. See State v. Stone, Utah, 629 P.2d 442 (1981).

Based upon the foregoing authority, appellant was not entitled to a manslaughter instruction as her theory of the case. The facts as found in the record and summarized in the Statement of Facts and Point I-A, supra, clearly indicate that there does not exist a scintilla of evidence providing a rational basis that would have justified the issuance of a manslaughter instruction. Furthermore, appellant's theory relied upon during trial was that she did not participate in the acts that led to the victim's death. This theory is wholly inconsistent with a manslaughter theory that at least requires the defendant to have caused the death of the victim.

Therefore, appellant was not entitled under this rubric to a manslaughter instruction.

CONCLUSION

The record is devoid of evidence justifying appellant's claim that the trial court erred when it refused to issue the requested manslaughter instruction. Therefore, respondent respectfully requests this Court to affirm appellant's conviction for second-degree murder.

Respectfully submitted this 29th day of October, 1982.

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CERTIFICATE OF MAILING

I hereby certify that I mailed two true and exact copies of the foregoing Brief, postage prepaid, to Ronald J. Yengich, Attorney for Appellant, 44 Exchange Place, Salt Lake City, Utah, 84111, this 29th day of October, 1982.

Susan Patton